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Coursework

- Write a case comment, 1500 words, deadline 5th January 2025
- The objectives are to:
  - Identify format of a case comment
  - Choose a case upon which to comment
  - Engage in discursive argument about a judicial decision
  - Plan and write a case comment
- Choose one from the following cases:

1. *Bethesda Softworks v. Warner Bros. and Behaviour Interactive* (US copyright infringement case; modding)
2. *Manchester United Football Club Ltd v Sega Publishing Europe Ltd & Anor* (UK trademark infringement case)
3. *MDY v Blizzard* (US copyright infringement case; cheating)

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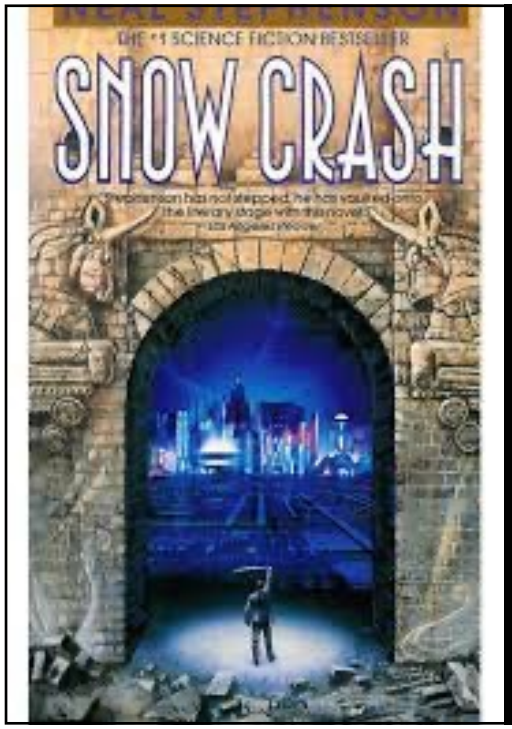

Neal Stevenson
Aka ‘OG Metaverse’

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Introduction

- Metaverse can be seen as a continuation of a trend where physical and digital worlds becoming indistinguishable
- A digital world with substantially similar features to those of the physical world
- IP will play a crucial role in the creation and experience of the Metaverse

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Definitions and Types

= *beyond the universe*

- 'A massively scaled and interoperable network of real-time rendered 3D virtual worlds that can be experienced synchronously and persistently by an effectively unlimited number of users with an individual sense of presence, and with continuity of data, such as identity, history, entitlements, objects, communications, and payments.' (Matthew Ball)
- Competing visions of the Metaverse:
  - Private metaverse, like *Meta* or *Sandbox*
  - Open metaverse, like *Odyssey*, based on open-source standards
  - Web 3 developers, such as *Decentraland*, based on Blockchain and cryptocurrency

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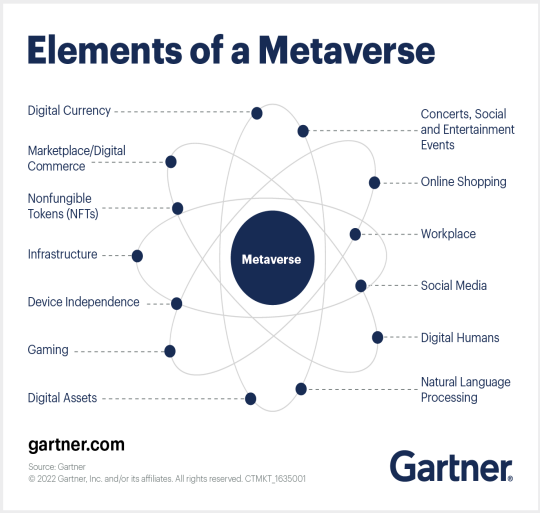

- **Imagine the Metaverse** as a seamless convergence of physical and digital aspects of our lives, including:
  - Purchasing outfits and accessories for online avatars
  - Buying digital land and constructing virtual homes
  - Participating in a virtual social experience
  - Shopping in virtual malls via immersive commerce
  - Using virtual classrooms to experience immersive learning
  - Buying digital art, collectibles and assets (NFTs)
  - Interacting with digital humans for onboarding employees, customer service, sales and other business interactions

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Characteristics and Features

- Scaling – ability to increase the size of the Metaverse
- Persistence – unlocking technical limitations to improve the immersiveness of the Metaverse
- Interoperability – the merging of different virtual worlds and systems
- Decentralisation / centralisation – distributing or concentrating control over data, content, online identity
- Economy – allowing for trading across the Metaverse
- Identity – evolving current online identities / avatars for a stronger connection to the user
- Convergence of digital and physical – spanning across many aspects of life
- Multiple contributors – content from all sorts of stakeholders from individuals to commercial organisations
- The concept of Metaverse is underpinned by IP – it will be used more, the risk of infringement and need for enforcement will increase as well

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Making the Metaverse

- A range of technologies including virtual reality (VR) (a three-dimensional online environment that can be entered by using a dedicated headset connected to a computer or game console), and augmented reality (AR) (shows the real world enhanced by computer-generated items, such as graphics), and mixed reality (XR)
  - VR – a computer-generated environment with scenes and objects that appear to be real
  - AR – the real-time use of information in the form of text, graphics, audio and other virtual enhancements integrated with real-world objects
  - XR – a blend of physical and digital worlds, unlocking natural and intuitive 3D human, computer, and environmental interactions

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Metaverse and Copyright

- Metaverse offers new opportunities for users and content creators (user-centred virtual economy), as well as businesses (infrastructure, digital products and services, brand extensions, new sources of revenue)
- It also represents new types and levels of infringement risks
  - For example, a potential liability of Metaverse providers as online content-sharing providers, for sharing infringing content (Article 17 Digital Copyright Directive)
- Infringement risks will be addressed mainly through a matrix of license agreements and technical processes to prevent others from reproducing, communicating or modifying existing creations
- Issues relating to applicable law and jurisdiction (copyright is territorial, the Metaverse is without borders), anonymity/pseudonymity of infringing parties, enforcement strategies will become more complex, but lessons can be learned from similar discourse with regards to copyright and the Internet

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Metaverse and Patents

- Patents will be mainly sought for the underlying technology rather than anything within the Metaverse itself – the building blocks, hardware and software
  - For example, immersive technologies implementing virtual reality (VR), augmented reality (AR) and mixed reality (XR)
- The risk of broad patents being detrimental to innovation
- To foster further innovation, licensing and standards will be crucial – patents that are essential to the implementation of a standard is known as ‘standard essential patents’ (SEPs)

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Metaverse and Trade Marks

- TMs in the Metaverse may include company's name and logos, distinctive sounds, shapes or colours, and an increased use of multimedia marks
- Metaverse offers new opportunities for companies to expand their business and engage directly with consumers, at a lower cost
- It also creates a challenge in
  - determining the *scope of protection* (registering a mark for goods and services both in the real and digital environments),
  - *extending* trade mark protection for physical goods to cover their digital counterparts (a case of luxury brands with an established reputation and goodwill), and
  - *territoriality* (trade marks are valid in the jurisdiction where they are registered, while the Metaverse is borderless)
  - The case of MetaBirkins – Hermès sued an artist for creating digital versions of their Birkin handbag, as non-fungible tokens (NFTs), without their permission

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Metaverse-specific Issues

- While there is no clear consensus on a technologically neutral definition of the Metaverse, there are common characteristics emerging that will have the most notable implications for IP. These characteristics, together with current, potential, and proposed technologies, inform future IP issues and challenges
- These characteristics are
  - Interoperability
  - (De)centralisation
  - Convergence of digital and physical
  - Multiple contributors

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Interoperability

- Interoperability – translates to the freedom and ease with which data, information, digital assets, and user identity will be able to move through the Metaverse
- There is no actual consensus on how interoperable the Metaverse will be in order to fulfil its potential, nor which specific technology will underscore that interoperability
- Interoperability can be considered with regards to
  - *infrastructure* (community-based standards and protocols),
  - *content* (technical attributes ensuring that content will display in the same away across different ecosystems and platforms), and
  - *licensing* (license agreements need to be drafted in a way to facilitate the interoperability and transfer of IP rights)

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(De)Centralisation

- There are three potential models the Metaverse can adopt (decentralised, centralised and hybrid)
- The core question is the extent to which the Metaverse will be or needs to be decentralised to fulfil its potential (similar to interoperability; these two characteristics are connected)
  - A *decentralised* platform is built mostly upon community-based standards and protocols (like the open web) and an 'open source' metaverse operating system or platform
  - A *hybrid* model represents a series of Metaverses with different levels of interconnections
  - This is the most viable model, with a number of large technological monopolies, dominating the different geographical and cultural regions
- The concept of a decentralised Metaverse challenges the IP legal regime, because the scope of protection and enforcement of IPRs in digital environments is currently predicated on the existence of centralised platforms

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Convergence of Digital and Physical

- The Metaverse may fully bridge the physical 'real world' and the 'digital' world, becoming a ubiquitous and large-scale virtualisation
- The eventual form which this convergence will take is still uncertain, but there are several technologies that can be identified, which potentially form the underlying architecture for the anticipated Metaverse
- **Physical to digital**
  - Virtual reality (VR)
  - Digital twins
- **Digital to physical**
  - Augmented reality and augmented space (AR)
  - Extended reality (XR)
- Smart objects / smart environments / "everyware"

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Multiple Contributors

- The Metaverse will be the product of multiple contributors, and its development and expansion will be significantly underscored by a vast number of users
- It will be populated by 'content' and 'experiences' created and operated by an incredibly wide range of contributors, some of whom are independent individuals, while others might be informally organized groups or commercially focused enterprises (Mathew Ball)
  - Roblox as a proto-Metaverse

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Key Points

- Any successful IP strategy must take into consideration the full scale of different representations of the Metaverse (e.g., decentralised or centralised) and related technologies, and focus on the various IP implications
- Common elements and characteristics of the Metaverse with the most profound impact on IP are:
  - Interoperability can exist on multiple levels – interoperability of the underlying technological standards, IP, and licences – and is likely to push the boundaries of IP protection
  - The extent of decentralisation / centralisation will have a direct impact on IP rights and enforcement
  - Convergence of physical and digital that will further challenge the increasingly artificial distinction between spaces, interactions, and implications for IP within physical and digital environments
  - The complexity of the ecosystem, with multiple contributors, focus on user-generated content, and multi-layered licensing framework will create further pressure for the IP system

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In-class Exercise

- A digital music service provider (**Spotify**) is hosting a live-streamed concert by **TNT** on a global gaming console platform (**Sony PlayStation**) during the interval of an eSports tournament organized by a leading games publisher (**Electronic Arts**) and sponsored by a luxury fashion brand (**Gucci**). **Gucci** is offering both digital and physical merchandise, including:
  - Original non-fungible tokens (NFTs)
  - VIP personalized experiences
  - Physical fashion items that fans can obtain by redeeming NFTs
- Identify all key **IP assets** and their associated rights in this scenario.
- Draft an **IP Strategy Memo** addressing how to protect and manage these assets.

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Thank you for your attention!

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